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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

B5

DATE **APR 03 2012**

Office: TEXAS SERVICE CENTER

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. Please note that all documents have been returned to the office that originally decided your case. Please also note that any further inquiry must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed and because the appeal was filed and signed by the beneficiary.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party or the attorney or representative of record must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the service center director issued the decision on May 29, 2009. It is noted that the service center director properly gave notice to the petitioner that it had 33 days to file the appeal. Neither the Immigration and Nationality Act (the Act) nor the pertinent regulations grant the AAO authority to extend this time limit.

Although the Form I-290B was dated June 29, 2009, it was not received by the service center until July 10, 2009, or 42 days after the decision was issued. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Director of the Texas Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii). However, as the appeal is also being rejected as signed by the beneficiary, the appeal need not be considered as a motion by the service center. The appeal is rejected. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

In addition, the appeal was signed and filed by [REDACTED] who is the beneficiary in this matter. U.S. Citizenship and Immigration Services (USCIS) regulations specifically prohibit a beneficiary of a visa petition from filing an appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B). Accordingly, the appeal is also rejected for this reason. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

The appeal has not been filed by the petitioner, an authorized representative or any entity with legal standing in the proceeding, but rather by the beneficiary. It is also untimely. Therefore, the appeal has not been properly filed and must be rejected.

ORDER: The appeal is rejected.